IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.347 of 2004
Date of Decision : September 07, 2006.

M/s Adarsh Enterprises ..... Petitioner

Vs.

Rakesh Dutt and others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

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Present : Mr.O.P.Goyal, Senior Advocate
with Mr.Balkar Singh, Advocate
for the petitioner.

Mr.C.M.Chopra, Advocate
for the respondents.

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P.S.Patwalia, J. (Oral) :

This order shall dispose of C.R.No.347 of 2004 and C.R.No.3987 of 2004.

Rakesh Dutt filed a suit for possession by way of redemption in respect of properties being shops which included the property, subject matter of controversy in these revisions. The suit was filed against two defendants. First was a firm M/s Umda Ram Sher Singh which was sued through its partners Vinod Kumar and Purshotam Kumar. The other two

defendants were Vinod Kumar and Purshotam Kumar, sons of Sher Singh. The suit was decreed by the trial court on 28.7.2001. A decree for possession in respect of the suit property by way of redemption on payment of Rs.64,000/- was passed. It is the admitted case between the parties that this decree was affirmed by the first appellate court and also in the Regular Second Appeal in this court and has since become final. Succeeding in the decree Rakesh Dutt filed an execution seeking possession of the shops in question. In that execution objections were filed on behalf of M/s Adarsh Enterprises, petitioners in revision petition No.347 of 2004. M/s Adarsh Enterprises is stated to be a partnership firm which comprises of three partners. These are Sher Singh, son of Umda Ram, who is none other than father of Vinod Kumar and Purshotam Kumar. The other two partners are Kamla Sharma, wife of Vinod Kumar and Vidyawati, wife of Purshotam Kumar. In the objections the firm took a stand that it had been in existence since 1989 and was doing business regularly. The firm was in possession of the disputed property since 1994 as a tenant and was paying rent regularly. It was therefore prayed that in the execution of the decree, possession of the property could not be taken by the firm. These objections have been rejected by the Executing Court. Against this order of rejection, Civil Revision No.347 of 2004 has been filed by the firm.

The same firm M/s Adarsh Enterprises has also filed a separate suit for declaration and permanent injunction praying that it is a tenant in the disputed shop and is paying rent regularly. They claim to be the tenants of one Ved Parkash who is brother of Rakesh Dutt. Rakesh Dutt is one of the five brothers who are all stated to be co-owners of the property. Along with the suit an application under Order 39 Rules 1 and 2 had been filed.

This application was taken up by the trial court along with objections raised by the petitioner-firm in the suit of Rakesh Dutt and others. The objections filed in the suit of Rakesh Dutt and others as also the application under Order 39 Rules 1 and 2 filed in the suit filed by the petitioner-firm were decided by the trial court by a common order. In fact a reading of the concluding portion of the order of Civil Judge (Senior Division), Rewari shows that it was on the asking of the revision-petitioners that the file pertaining to the application under Order 39 Rules 1 and 2 in the suit was called and decided along with the objections filed by them. The relevant observations of the Civil Judge (Senior Division), Rewari to this effect are as hereunder :-

> *"Since the objections as well as the application for stay of the execution proceedings preferred by the applicant/objectors have been dismissed with costs and special costs, so, as a natural corollary, the stay application preferred by the applicant/objector in the capacity of the plaintiff in a separate civil suit, titled "M/s Adarsh Enterprises Kathmandi Rewari through partner Sher Singh since deceased V/s Rakesh Dutt etc. involving the same issues between the same parties, which had been taken up for hearing after calling in the file of the aforesaid civil suit at the instance of the applicant/objector, also stands dismissed. One copy of this order be also placed in the aforesaid file. The aforesaid file of the civil suit titled `M/s Adarsh Enterprises Rewari through partner Sher Singh since*

deceased V/s Rakesh Dutt etc." be sent back for hearing on the date fixed i.e. 2.1.2004 for the purpose already stated."

After the application under Order 39 Rules 1 and 2 was dismissed, the firm preferred first appeal before the learned Additional District Judge, Rewari. Their first appeal was also dismissed on 19.2.2004. Against the orders rejecting their application under Order 39 Rules 1 and 2 and dismissing their first appeal, the firm has filed Civil Revision No.3987 of 2004.

I have heard Shri O.P.Goyal, learned senior counsel appearing for the petitioner-firm in Civil Revision No.347 of 2004 and have also heard Shri C.M.Chopra, learned counsel appearing for the respondents in both the revision petitions.

Mr.Goyal has confined his arguments to the order dismissing the objections filed in execution of the decree dated 28.7.2001. He has primarily argued that the objections filed by the firm could not have been dismissed in a summary manner. He contends that it was incumbent upon the Executing Court to first frame issues and thereafter proceed to decide the objections. For this proposition he has relied upon the judgment in the case of *Anwarbi vs. Pramod D.A. Joshi and others* reported as *2000 (10)SCC 405.*

On the other hand Mr.Chopra submits that this is all an exercise by an unsuccessful defendant to frustrate the execution of decree passed in favour of the plaintiff in July 2001. He further contends that the defendants in the original suit are same persons who are now filing objections and have also filed a fresh suit now showing themselves to be a firm. He submits that

three partners in the firm are none other than two defendants in the earlier suit and the deceased father of the aforementioned two defendants. He therefore submits that there is no error in the order passed by the Executing Court dismissing the objections.

Having gone through the order passed by the Executing Court I find no merit in the contention raised by the learned counsel for the petitioner. A reading of the order would show that the Executing Court had found that even though the objectors are claiming themselves to be the tenants but they miserably failed to prove this point. No rent note has been filed nor any receipt showing any payment of rent was brought on record to prove this fact. Still further it is found that Ved Parkash was only one of the co-owners and could not have let out the premises to the objectors as tenants. Be that as it may I am also left with a positive impression that this petition is nothing but an exercise to frustrate the execution of the decree passed on 28.7.2001. The objectors are none else than the defendants in the original suit. A clear decree for possession has been passed against them. The objections now raised are merely an effort to frustrate the execution of the decree. No doubt it is correct that a view has been taken that the Executing Court, in certain circumstances, should frame issues before objections are decided but I am of the opinion that in this case, the Court has considered the objections raised on the basis of the material before it and has rightly rejected the same. The contentions raised by the objectors have been duly considered and I am of the opinion that in the present case the order dismissing the objections does not deserve to be set aside merely because issues have not been framed. I therefore find no merit in the contention raised by the learned counsel for the petitioner.

No one has appeared in support of Civil Revision No.3987 of 2004. In any case I have gone through the two orders. The view taken by the courts also is that the plaintiffs have failed to prove any prima facie evidence that they were tenants in the said property. No rent deed, rent note or even any receipt showing payment of any rent was produced on the record. In the absence of these documents the courts below rightly rejected the claim of the plaintiffs for relief of ad interim temporary injunction.

For the reasons aforementioned I find no merit in the present two revision petitions. The same are therefore dismissed.

September 07, 2006 (P.S.Patwalia)
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